Supreme Court, U.S.
FILED
DEC 6 1994
OFFICE OF THE CLERK

No. 94-624

In The
Supreme Court of the United States
October Term, 1994

JOAN DAWSON, PAUL DAWSON, and TANDRA DAWSON,

Petitioners,

- against -

DONALD M. HALPERIN, Commissioner of the New York State Division of Housing and Community Renewal, and THE CITY OF NEW YORK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

RESPONDENT CITY OF NEW YORK'S BRIEF IN OPPOSITION

PAUL A. CROTTY,
Corporation Counsel of the
City of New York,
Attorney for Respondent
City of New York,
100 Church Street,
New York, N.Y. 10007.
(212) 788-1056 or 1010

LEONARD J. KOERNER,*
JULIAN BAZEL,
STEPHEN J. McGRATH,
of Counsel.
*Counsel of Record
December 6, 1994

QUESTIONS PRESENTED

1. Whether the New York Court of Appeals properly determined that the issues presented in this proceeding have become moot.

2. Whether petitioners have shown that the New York rent control provisions which protect a tenant who has resided in an apartment for more than twenty years from eviction by a landlord seeking possession of the apartment for his or her personal use violates any right of petitioners under the Fifth or Fourteenth Amendments to the Constitution of the United States.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
INTRODUCTION	1
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	2
CONCLUSION	7

TABLE OF AUTHORITIES

Cases: **Page**

First English Evangelical Lutheran Church v. Los Angeles, 482 U.S. 304 (1987) 3

Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470 (1987) 6

Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) 4

Nollan v. California Coastal Comm., 483 U.S. 825 (1987) 4-5, 6

Yee v. City of Escondido, __U.S.__, 112 S. Ct. 1522 (1992) 4, 5

Statutes:

9 NYCRR §2204.5(a) 4

New York City Administrative Code, §26-408(b)(1) . 4

In The
Supreme Court of the United States
October Term, 1994

JOAN DAWSON, PAUL DAWSON, and TANDRA DAWSON,

Petitioners,

- against -

DONALD M. HALPERIN, Commissioner of the New York State Division of Housing and Community Renewal, and THE CITY OF NEW YORK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

RESPONDENT CITY OF NEW YORK'S BRIEF IN OPPOSITION

INTRODUCTION

Petitioners challenge certain rent control provisions applicable within the City of New York which protect from eviction tenants who have resided in a rent-controlled apartment for twenty years or longer. It is the position of

the City of New York, respondent here and defendant in the courts below, that the issues raised by the petition do not merit review in that they have been rendered moot by petitioner Joan Dawson's purchase of the tenants' leasehold, and in any event because the petitioners have failed to show that the challenged regulations are in conflict with any decision of this Court or of any other court.

STATEMENT OF THE CASE

The respondent City of New York hereby adopts the Statement of the Case set out at pages two through six of the Brief in Opposition of Respondent Halperin.

REASONS FOR DENYING THE WRIT

As in more fully stated in the brief of respondent Halperin, the writ should be denied because the issues are moot, and further because petitioners have failed to show that the challenged regulations interfered with any constitutional right.

The issues are moot because the tenants, who were protected from eviction by the challenged regulations because they had resided in the premises for more than twenty years, have vacated the premises pursuant to a sale of their leaseholds to petitioner Joan Dawson, the owner of the building. Petitioner's argument that there was a temporary taking for which they should receive compensation, citing First English Evangelical Lutheran Church v. Los Angeles, 482 U.S. 304 (1987), is unavailing. In their complaint and submissions on the cross motions for summary judgment, petitioners sought only a judicial declaration of the statutes' unconstitutionality; petitioners never sought damages. Indeed, even had petitioners succeeded in having the challenged regulations declared unconstitutional, they would still be required, as noted by the Appellate Division, to establish an immediate and compelling need for personal use of the property. App. to

Pet., p.13a; see 9 NYCRR § 2204.5(a) and New York City Administrative Code § 26-408 (b) (1) (respectively set out at App. to Pet., pp. 27a, 30a-31a). Under those circumstances a claim for damages would have been speculative and in fact was not sought by petitioners. Petitioners, who desired to ultimately evict the tenants, are now free to use their property unaffected by the challenged regulations. The issues raised by petitioners are moot.

In any event, petitioners have failed to show any constitutional violation. There has been no physical taking. This Court has set a "clear rule" for determining such claims. Yee v City of Escondido, - U.S. -, 112 S. Ct. 1522, 1526 (1992). There has been no permanent occupation of the property by the government or by a third party authorized by the government. Loretto v Teleprompter Manhattan CATV Corp., 458 U.S. 419, 434 (1982); Nollan v California Coastal Comm., 483 U.S. 825,

832 (1987). The challenged regulations do not "require[ ] any physical invasion of petitioner's property." Yee, p. 1528. The tenants were on the property when petitioner Joan Dawson decided to purchase the property, and as the Appellate Division pointed out in its decision, there are numerous circumstances under which a landlord might recover the tenant's accommodation despite the challenged regulations. App. to Pet., pp. 9a-10a. Here there is nothing more than a regulation of the landlord tenant relationship and the use of the property, not a physical taking. Yee, pp. 1529, 1531. Petitioners' asserted "right to exclude outsiders" (Pet., p. 13) is nothing more than an unfettered right to evict pre-existing tenants; however, a limitation on the right to evict a present tenant is the essence of rent regulation, not a physical occupation.

Likewise, petitioners have failed to establish a regulatory taking. Petitioners have conceded that they

cannot show economic hardship. Pet., p. 13, n.7; Nollan v Calif. Coastal Comm., supra, 483 U.S. at 834; Keystone Bituminous Coal Assn. v DeBenedictis, 480 U.S. 470, 485 (1987). Petitioners' assertion that the regulations improperly frustrated their reasonable investment-backed expectation of evicting the tenants was properly rejected by the Appellate Division in light of the highly regulated nature of the rent control system. App. to Pet., p. 13a. Finally, petitioners' argument that the regulations do not substantially advance legitimate state interests in its protection of long-term tenants, particularly in light of their concession that the regulation does forward such an interest in protecting the elderly and disabled (Pet., p. 20), is no more than an invitation to the Court to act as a super-legislature and to second-guess the decisions of New York's legislators. The disruptive effect upon long-term tenants in particular and upon the community in general arising from

such evictions is a matter of public concern which may and did support legislative action. App. to Pet., pp. 14a - 15a; Resp. Halperin's Brief in Opp., pp. 2 - 3. For that reason also, petitioners' substantive due process claim was properly dismissed below as "frivolous." App. to. Pet., p. 15a.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

Dated: New York, New York
December 6, 1994

Respectfully submitted,

PAUL A. CROTTY
Corporation Counsel of the
City of New York
Attorney for Respondent
City of New York

LEONARD J. KOERNER*,
JULIAN BAZEL,
STEPHEN J. McGRATH,
of Counsel.

*Counsel of Record